

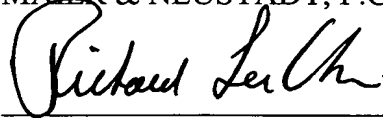
Restriction is only proper if the claims of the restricted groups are independent or patentably distinct and there would be a serious burden placed on the examiner if restriction is not required. (MPEP 803). The burden of proof is on the examiner to provide reasons and/or examples, to support any conclusion in regard to patentable distinctness (MPEP 803). Applicants respectfully traverse the restriction requirement on the grounds that the examiner has not carried the burden of providing any reason and/or examples to support any conclusion that the claims of the restricted groups are patentably distinct.

The examiner has categorized the relationship between Group I and II as process of making and product made. Patentable distinctness may be shown if either or both of the following can be shown (1) that the process as claimed could be used to make other and materially different products or (2) that the product as claimed can be made by another and materially different process (MPEP § 806.04(f)). In the present case, the examiner asserts that "The product can be made by packaging fish in a metal can with a modified atmosphere (not a wrapper) without cooking the vegetables and/or starches." However, the examiner has provided no reason in support of his belief that the product as claimed could be made by canning, and accordingly, the examiner's reasoning is nearly a restatement of the examiner's conclusion that the two groups are patently distinct. As the examiner has provided no reasons in support of his belief, the examiner has not met the burden placed upon him, and accordingly, the restriction is believed to be improper and should be withdrawn.

Applicants submit this application is now in condition for examination on the merits
and early notification of such action is earnestly solicited.

Respectfully submitted,

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